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DISTRICT JUDGE GEORGINA LUM
21 April 2025

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

[2025] SGMC 27

Magistrate's Court Originating Claim No 3429 of 2022

Between

Kai Hospitality Pte. Ltd.

… *Claimant/Defendant in Counterclaim*

And

Mevan Asia Pte. Ltd.

… *Defendant/Claimant in Counterclaim*

JUDGMENT

[Landlord and Tenant — Contract — Breach]
[Landlord and Tenant — Covenant — Quiet Enjoyment]

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Kai Hospitality Pte. Ltd.
v
Mevan Asia Pte. Ltd.

[2025] SGMC 27

Magistrate's Court Originating Claim No 3429 of 2022
District Judge Georgina Lum
7 May, 18 July 2024, 13 January 2025

21 April 2025 Judgment reserved.

District Judge Georgina Lum:

Background facts

1 Mr. Tan Wee Tiong ("Mr Tan") was the owner and/or proprietor of a building located at [address redacted] ("the Premises") between 25 June 2009 and 31 May 2022. The Premises was sold to Amazing PV Pte. Ltd. ("Purchaser") sometime on or around 31 May 2022.

2 The claimant and defendant in counterclaim in the present proceedings is Kai Hospitality Pte Ltd ("Kai Hospitality"). Kai Hospitality is a company incorporated in Singapore and is in the business of management consultancy services for hotels and hotels management[1].

[1] Claimant's Closing Submissions ("CCS") at [1]

3 Kai Hospitality had entered into the following two tenancy agreements with Mr Tan[2]:

(a) A tenancy agreement dated 30 April 2021 for part of level 1 of the Premises for a fixed period of 24 months; and

(b) A tenancy agreement dated 18 January 2022 for the remaining part of level 1 of the Premises as well as 32 rooms spread out from level two to level five and the attic of the Premises (the "Hotel Premises") for a fixed period of 12 months commencing 1 February 2022.

4 Mr Tan is the brother of Ms Tan Hui See ("Ms Tan") who is a director and head of operations of Kai Hospitality[3].

5 It is Kai Hospitality's evidence[4] that Kai Hospitality: (a) assisted Mr Tan in renting out the first floor of the Premises along with the Hotel Premises during the time he owned the Premises; (b) was allowed to sub-let the first floor of the Premises and the Hotel Premises; and (c) held onto the utilities account for the Premises till on or about 15 June 2022 as it was waiting for the new owners and/or their representatives to take over the utilities account to avoid disruption to the businesses on the Premises.

6 In the context of the above, in 2021, Kai Hospitality entered into a sub-tenancy agreement (as a landlord) with the defendant and claimant in counterclaim in the present proceedings, Mevan Asia Pte. Ltd ("Mevan") in 2021 (as its tenant).

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[2] Ms Tan Hui See's ("Ms Tan") Affidavit of Evidence in Chief ("AEIC") at [8]

[3] Ms Tan's AEIC at [1]

[4] Ms Tan's AEIC at [7] to [12] and CCS at [3] and [4]

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(a) On or around 21 April 2021, Kai Hospitality and Mevan signed a letter of intent relating to the rental of 1500 square feet of the Premises ("Letter of Intent")[5].

(b) On 3 May 2021, Kai Hospitality and Mevan signed a tenancy agreement for the rental of "an approximate area of 1500 sq feet" located on the first floor of the Premises ("the Tenanted Premises") for a period of 24 months from 1 June 2021 to 31 May 2022 (hereinafter to be referred to as "the Term" and "the Tenancy Agreement" respectively)[6].

(c) Mevan is in the business of, *inter alia*, operating restaurants and operated a food & beverage restaurant named, Daun Bistro at the Tenanted Premises during the Term of the Tenancy Agreement[7].

7 During the Term of the Tenancy Agreement, Kai Hospitality also had other sub-tenants at the Premises:

(a) From in or around October 2021, Kai Hospitality leased the "rest of the levels of the Premises (i.e. the second floor onwards) to an entity serving as a designated facility for people serving their Stay-Home Notices ("SHN Facility Sub-Tenant")[8]; and

(b) Kai Hospitality also entered into another sub-tenancy agreement dated 19 January 2022 for a fixed period of 12 months commencing 1

[5] BA 51 and Agreed Statement of Facts ("ASOF") at [4]

[6] BA 33 to 38 and ASOF at [5]

[7] ASOF at [3]

[8] ASOF at [15]

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February 2022 with an entity called Lion Peak Pte Ltd for the Hotel Premises ("Lion Peak")[9].

8 In February 2022, issues begin to arise between parties on *inter alia* the apportionment and payment of water, gas, electricity and refuse disposal charges incurred at the Tenanted Premises[10].

9 On 25 October 2022, the present proceedings were commenced by Kai Hospitality.

Issues to be determined

The Claimant's case

10 It is Kai Hospitality's pleaded case[11] that:

(a) Mevan should have applied for its own utilities account but had instead requested to tag along on Kai Hospitality's utilities account;

(b) Out of goodwill, Kai Hospitality had acceded to Mevan's request;

(c) As a result of the above, Kai Hospitality would:

(i) first pay for utility charges incurred at the Premises before proceeding to "apportion (the utility charges) between parties based on their usage"; and

[9] ASOF at [16] and Ms Tan's AEIC at [10]

[10] ASOF at [9] and [19]

[11] Statement of Claim ("SOC") at [7] to [11]

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(ii) thereafter, issue invoices and seek reimbursement from Mevan for its "share" of the utility charges; and

(d) Kai Hospitality is entitled to a "reimbursement" of the aggregate sum of S$30,455.48 being the outstanding balance owed for Mevan's "share" of the utility charges incurred at the Premises ("Reimbursement Claim") plus an additional 10% administrative charge levied on the same; and

(e) Mevan had breached the Tenancy Agreement by:

(i) Failing, neglecting and refusing to pay the Reimbursement Claim and administrative charges owed to Kai Hospitality; and

(ii) Refusing, neglecting and failing to apply for its own utilities account after Kai Hospitality had requested it to do so.

The Defendant's defence and counterclaim

11 In its defence, Mevan pleads that[12]:

(a) There is no obligation under the Tenancy Agreement for it to apply and have its own utilities account and Kai Hospitality had only asked the Mevan to apply for its own utilities account in or around February 2022;

(b) There was an understanding between parties that the utility charges imposed on Mevan would not be more than S$1,500 per month;

[12] Defence and Counterclaim (Amendment No. 1) ("D&CC") at [8] and [10] to [12]

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(c) It is unclear whether the apportionment of utility charges to Mevan took into account utilities serving the common areas, the number of parties using the utilities in the Premises and the respective amount of use of the utilities;

(d) Mevan had grave doubts as to whether Kai Hospitality had apportioned the utilities fairly and/or equitably;

(e) Kai Hospitality was not entitled to impose a 10% administrative charge;

(f) Mevan did not make full payment of the charges imposed by Kai Hospitality because Kai Hospitality had failed, refused and/or neglected to provide Mevan with the complete set of supporting documents and requested information with respect to the apportionment of Mevan's share for water and electricity usage; and

(g) Mevan had made payment of the aggregate sum of S$16,791.61 to Kai Hospitality on protest.

12 In its counterclaim, Mevan pleaded:

(a) That Kai Hospitality had failed to provide Mevan with quiet possession and/or enjoyment under Clause 3(e) of the Tenancy Agreement[13]; and

(b) Other counterclaims arising from[14]: (i) purported acts of trespass and unlawful interference committed by a third party, SG Hospitality

[13] D&CC at [20] and [21]

[14] D&CC at [22] to [35]

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Management Pte. Ltd ("Sg Hospitality"); and (ii) a purported conspiracy between SG Hospitality and Kai Hospitality.

13 In its Defence to Counterclaim, Kai Hospitality denied Mevan's counterclaim in its entirety.

14 On the second day of trial[15]: (a) a settlement was reached between Mevan and SG Hospitality; (b) Mevan withdrew all its claims against SG Hospitality; and (c) withdrew its claim in conspiracy against SG Hospitality and Kai Hospitality.

Issues to be determined

15 In the circumstances, the issues before me are as follows:

(a) Does the limit of S$1500 per month apply to monthly utilities charges to be paid by Mevan to Kai Hospitality during the Term of the Tenancy Agreement?

(b) Is Mevan obliged under the Tenancy Agreement to create a separate utilities account for the Tenanted Premises?

(c) Is the Reimbursement Claim the result of an appropriate and equitable apportionment of utility bills between parties at the Premises and has Mevan breached the Tenancy Agreement by failing to make full payment of the said claim?

(d) Is Kai Hospitality entitled to the 10% administrative charge levied against Mevan?

[15] NE, 18 July 2024, 1/21-4/3

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(e) Did Mevan breach the Tenancy Agreement and what is the outstanding amount payable by Mevan to Kai Hospitality for the utilities it had incurred during the Term of the Tenancy Agreement?

(f) Has Mevan proven that Kai Hospitality had breached the covenant of quiet enjoyment provided for in the Tenancy Agreement? If yes, what are the amount of damages due to Mevan?

Does the limit of S$1500 apply?

16 The principles applicable to contractual interpretation are trite and clearly stated in *CIFG Special Assets Capital I Ltd (formerly known as Diamond Kendall Ltd) v Ong Puay Koon and others and another appeal* [2018] 1 SLR 170 at [19] cited in *Hoon Kee Meng and another v Dash Living Pte Ltd and another matter* [2024] SGHC 27 ("*Hoon Kee Meng*") at [19] as follows:

(a) The starting point is that the court looks to the text that parties have used.

(b) The court may have regard to the relevant context as long as the relevant contextual points are clear, obvious and known to both parties.

(c) The court has regard to the relevant context because it then places itself in the best possible position to ascertain the parties' objective intentions by interpreting the expressions used by the parties in the [contract] in their proper context.

(d) In general, the meaning ascribed to the terms of the contract must be one which the expressions used by the parties can reasonably bear.

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17 Even where a subject to contract clause exists, the court can consider the contents of a letter of intent to ascertain the intentions of parties at the material time they execute a letter of intent and any later agreement: See *Hoon Kee Meng* at [27].

18 Adopting the approach stated above, I now turn to review terms of the Letter of Intent, the Tenancy Agreement and the circumstances surrounding the execution of both documents to consider if there was an agreement for monthly utility charges to be capped at S$1,500.

19 It is Mr Sudjono's evidence that he was first informed by Mevan's property agent, Ms Desi Desmiarti ("Ms Desi") on 14 April 2021 that she had a new listing at the Premises[16]. It is Mr Sudjono's further evidence that the issue of the S$1,500 limit on utility charges was first raised between parties at the first viewing of the Tenanted Premises conducted on 20 April 2021 where[17]:

(a) Ms Tan had rejected Mevan's proposal to install a split meter for the Tenanted Premises so she could avoid incurring additional costs; and

(b) the S$1,500 limit on utility charges was proposed by Ms Tan to address Mevan's concerns that there would be issues with the supply and payment of utilities if no split meter was installed for the Tenanted Premises.

20 I am not entirely persuaded by Mr Sudjono's evidence on the discussion that had purportedly occurred during the visit at the Premises on 20 April 2021 as I note that Ms Tan had on 22 April 2021 made the following comments on

[16] Mr Sudjono's AEIC at [5] to [7]

[17] Mr Sudjono's AEIC at [9]

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Clause 9 in the third draft of the Letter of Intent which was sent to Mr Sudjono at 11.39am[18]:

> *9) Utility Supply: Charges for the supply of water, electricity and gas shall be borne by the tenant base on average 1st billing during Hotel not in operation (not more than S$1,500.00/month)*
>
> *Please elaborate to the following:*
> *9) Utility Supply: Charges for the supply of water, electricity and gas shall be borne by the tenant base[d] on the average of initial 2 months of billing cycle from the restaurant in full operation and, when the Hotel is not in operation (these bills estimated to be around $1,500 per month)*

21 It therefore appears that on 22 April 2021, Ms Tan had wanted the figure of S$1,500 to be an estimate of the monthly utility billings to be paid by Mevan and had not accepted that a hard limit would be placed on the total amount of monthly utilities payable by Mevan. It does however appear at this juncture that parties had a general understanding that the billing of utility charges would be based on a calculation methodology to be agreed to between parties and that Mevan would be using Kai Hospitality's utilities account after the commencement of the tenancy.

22 Notwithstanding the position taken by Ms Tan above, the Letter of Intent was executed by Ms Tan at 2.23pm on 22 April 2021 and the final version of Clause 9 of the Letter of Intent accepted by both parties reads as follows:

[18] CBD 565-567

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> *9) Utility Supply:* *Charges for the supply of water, electricity and gas shall be borne by the tenant base on average 1st billing during Hotel not in operation (not more than $1,500.00/month)*

23 At trial, Ms Tan has also accepted that[19]:

(a) She had acknowledged her agreement to the Letter of Intent; and

(b) There was an understanding that utility charges would be capped at S$1,500 per month as at 22 April 2021.

24 While she did rightfully concede the above, Ms Tan did however also make clear on the stand that it was her understanding that the terms within the Letter of Intent were to be "ironed out" in the Tenancy Agreement[20].

25 For completeness, in view of the evidence above, I do not accept Ms Tan's evidence that Kai Hospitality "was never agreeable for such charges to be capped at S$1,500 per month" and that she "(does) not know why such a limit was included in the (Letter of Intent) in the first place"[21].

26 I am however prepared to accept that on a balance of probabilities that at the material time, parties had no intention for the terms stated within Clause 9 of the Letter of Intent to continue applying after the Tenancy Agreement. I elaborate below.

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[19] NE, 7 May 2024, 79/28-80/13 and 81/5-13

[20] NE, 7 May 2024, 79/258-80/13

[21] Ms Tan's AEIC at [14]

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27 In the Letter of Intent, it is clearly anticipated that the final binding agreement between parties would be the Tenancy Agreement and that it remains open to Kai Hospitality not to execute the Tenancy Agreement within the confines of the terms and conditions discussed in the Letter of Intent or at all (subject to its refund of the deposit payable by Mevan and the paying of Ms Desi's commission)[22].

(a) Clause 13 of the Letter of Intent contemplates the execution of a tenancy agreement by 30 April 2021;

(b) Clause 14 contemplates *inter alia* a refund by Kai Hospitality of the deposit payable under the Letter of Intent by Mevan in the event that the "Landlord fails to sign the Tenancy Agreement after the terms and conditions are already agreed"; and

(c) Clause 15 contemplates *inter alia* a forfeiture by Mevan of the deposit it would pay under the Letter of Intent in the event that "the Tenant fails to sign the Tenancy Agreement after the terms (and) conditions are already agreed as abovementioned".

28 In line with the approach above, after the Letter of Intent was executed, there was a window where negotiations were conducted and drafts exchanged between 22 April 2021 and 2 May 2021 before the Tenancy Agreement was executed on 3 May 2021[23]. The contemporaneous WhatsApp communications disclosed by parties reflect this. In particular, the WhatsApp exchanges during this period record that:

[22] BA 364 and 365

[23] Mr Sudjono's AEIC at [22] to [29]

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(a) Ms Desi had sent over a preliminary tenancy agreement on 22 April 2021[24] to both Ms Tan and Mr Sudjono;

(b) Thereafter, there was a meeting between Mr Sudjono, Ms Tan and Ms Desi at the Premises on 26 April 2022 at 5pm[25];

(c) After this meeting, in a private WhatsApp conversation with Ms Desi on the same day around 8pm, Mr Sudjono had sought Ms Desi's confirmation that the tenancy agreement "will be done this week" and Ms Desi had confirmed that she would prepare a draft Tenancy Agreement for circulation[26];

(d) Between 22 April and 1 May 2021, Mr Sudjuno had "check(ed)" and read the drafts of the Tenancy Agreement and provided his comments to or had a discussion on the said agreement with Ms Desi over *inter alia* a phone call on 1 May 2021[27];

(e) Comments on the draft Tenancy Agreement were exchanged between parties[28]; and

(f) Arrangements were made for the execution of the Tenancy Agreement on 3 May 2021[29].

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[24] CBD 273

[25] CBD 573

[26] CBD 414

[27] CBD 414, 415 and 573

[28] CBD 573

[29] CBD 573 and 574

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29 In Mr Sudjono's Affidavit of Evidence in Chief, Mr Sudjono was silent as to the substance of discussions between 22 April 2021 and 3 May 2021 with respect to the S$1,500 limit or otherwise and specifically silent as to how the omission of Clause 9 from the Tenancy Agreement came about.

30 It is also Mevan's pleaded case that "for reasons unbeknownst to the Defendant, the said clause on the utilities supply was not adopted in the Tenancy Agreement"[30].

31 I am however unable to accept Mevan's pleaded position when it is clear from the contemporaneous documentation communications that:

(a) There were negotiations between 22 April 2022 and 3 May 2022;

(b) Mr Sudjono had actively reviewed and commented on drafts of the Tenancy Agreement[31]; and

(c) Mevan's property agent, Ms Desi, had prepared both the Letter of Intent and the Tenancy Agreement[32].

32 Further to the above, it is also clear that the installation of a split meter at the Tenanted Premises and Mevan's usage of Kai Hospitality's utilities account was still a live issue between parties well after the execution of the Tenancy Agreement when Mevan moved into the Tenanted Premises in or around June 2021.

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[30] CBD 90

[31] CBD 414 and 415

[32] CBD 251-553

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33 This would not have been the case if both parties were of the common understanding and agreement that Clause 9 of the Letter of Intent were binding and/or would form part of the Tenancy Agreement as Clause 9 is premised on the understanding that no split meter is installed, that Mevan would use Kai Hospitality's utilities account(s) and that Mevan would be billed "base(d) on the average 1st billing during (the period where a) Hotel (is) not in operation" on the Premises". It is in fact not disputed by Mevan and Mr Sudjono's position that under the terms of the Letter of Intent the understanding was that "Ms Tan would provide (Mevan) with the utility supply"[33].

34 I note in particular that on 1 June 2021:

(a) Ms Tan had informed all parties in the WhatsApp group chat created by Ms Devi that she "wish(ed) to let (all of them) know that (she has) agreed with (Mr Sudjono) that the new set up will use the SP Gas under Kai's account which is till (live)"[34];

(b) Ms Desi and Mr Sudjono's business partner had thanked Ms Tan for reaching that agreement with Mr Sudjono[35];

(c) In particular, Ms Desi had remarked that "wow, that's better. (Mr Sudjono) just settle the bill (with) Ms Tan"; and

(d) Notwithstanding the agreement reached, Mevan had tried to open a gas account in Mevan's name[36].

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[33] Mr Sudjono's AEIC at [24]

[34] CBD 575

[35] CBD 575 and 576

[36] Mr Sudjono's AeIC at [48]

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35 In my view: (a) the above communications exchanged between parties reflects that no firm agreement had been reached on whether Mevan would be using a split meter before 1 June 2021; and (b) there would have been no need for Mevan to take steps to apply for its own gas split meter on 1 June 2021 if there was an intention or understanding that the terms in Clause 9 of the Letter of Intent remained binding between parties.

36 I further note that in the present proceedings, Mevan has also not sought to refer to and/or rely on the crux of Clause 9 which specifies that the "charges of water, electricity or gas" would be calculated "base(d) on the average 1st billing during (the period where a) Hotel (is) not in operation" on the Premises. Mevan has only sought to rely on the limit of S$1,500 which is tagged to this calculation method specified in Clause 9 of the Letter of Intent.

37 Based on the evidence given by Kai Hospitality, there were no guests at the hotel in the period from 1 June 2021 to 9 July 2021[37]. Despite this, neither party has asserted that the calculation method proposed in Clause 9 of the Letter of Intent applies and I am of the view that this supports my finding that neither party had intended for the terms in the Letter of Intent to be binding after the execution of the Tenancy Agreement.

38 Lastly, as is clear from the chronology of events above, Mr Sudjono is the relevant representative of Mevan who primarily conducted negotiations on the lease and Tenancy Agreement with Kai Hospitality. On the stand, Mr Sudjono had accepted unequivocally that[38]:

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[37] Ms Li Yin Yin's AEIC at [13]

[38] Notes of Evidence ("NE"), 18 July 2024, 129/14-131/12

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(a) There was no mention of the S$1500 limit stated in the Letter of Intent in the letter of demand dated 1 March 2022 issued by Mevan's solicitors; and

(b) "the capping of the utilities at S$1,500 was not mentioned because this was no longer a term under the (Tenancy Agreement) that was (signed)".

39 Unlike the factual matrix contemplated within the case of *Hoon Kee Meng*, in the present case:

(a) Mevan (through its property agent) was the party who had undertaken the task of drafting the final Tenancy Agreement

(b) There is no evidence or assertion that Kai Hospitality had surreptitiously engineered the omission of Clause 9 of the Letter of Intent without Mecan's knowledge;

(c) There is no clause within the Tenancy Agreement expressly incorporating the terms of the Letter of Intent in the final agreement reached between parties; and

(d) The conduct of both parties at the material time indicated that they did not have any intention of treating Clause 9 of the Letter of Intent as a binding between parties after the execution of the Tenancy Agreement.

40 In the circumstances, I am of the view that parties did not have the intention and did not reach an understanding that Clause 9 of the Letter of Intent would continue to apply after the execution of the Tenancy Agreement, did not reach an agreement that a hard limit of S$1,500 would be maintained as a cap

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on any charges incurred by Mevan and had instead left the issue of the calculation and methodology behind the charging of utilities to Mevan under the Tenancy Agreement open till in or around June 2021.

Was Mevan obliged to create a separate utilities account?

41 Kai Hospitality has pleaded that Mevan has breached the Tenancy Agreement by "refusing, neglecting and failing to apply for its own utilities account after Kai Hospitality had requested it to do so". I am however unable to see a contractual basis for these submissions as neither the Letter of Intent (which Kai Hospitality asserts is not binding) nor the Tenancy Agreement imposes any such obligation on Mevan.

42 Firstly, for the reasons stated above, Clause 9 of the Letter of Intent shows that as at its date of execution, the understanding between parties was that:

(a) Mevan would not create a separate utilities account;

(b) Mevan would use Kai Hospitality's utilities account(s); and

(c) Mevan would be billed "base(d) on the average 1st billing during (the period where a) Hotel (is) not in operation" on the Premises".

43 Secondly, under the Tenancy Agreement there is no obligation placed on Mevan (or indeed Kai Hospitality) to create a separate utilities account for the Tenanted Premises.

44 The Tenancy Agreement is silent as to the appropriate method of apportionment of utilities at the Premises between various tenants notwithstanding the fact that as at the date the Tenancy Agreement was entered

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into: (a) there was no existing separate utilities account for the Tenanted Premises and only one account for the Premises held in Kai Hospitality's name; and (b) Mevan was only renting approximately 1,5000 square feet of the first floor of the Premises.

45 Both parties were well aware of the facts above and if the intention was indeed for an obligation to be placed on Mevan to create a separate utilities account, such a term should or would have been negotiated and/or inserted into the Tenancy Agreement. There is however no evidence or documents showing that such negotiations were conducted at the material time and there is no term inserted into the Tenancy Agreement.

46 It therefore appears that as at the date on which the Tenancy Agreement was executed, along with leaving the issue of the methodology and calculation of charges to be imposed on Mevan open, parties were also content to leave the option of creating a separate utilities account open for exploration.

47 This is consistent with:

(a) The undisputed fact that Mevan had attempted to open a utilities account on 1 June 2021; and

(b) The contemporaneous WhatsApp communications recording that an agreement for Kai Hospitality to apportion utilities to Mevan was only reached on 1 June 2021[39].

48 In the circumstances, I am of the view that:

[39] CBD 575 and 576

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(a) There is no obligation under the Tenancy Agreement for Mevan to set up a separate utilities account; and

(b) Mevan has not breached the Tenancy Agreement by failing to apply for its own utilities account after Kai Hospitality had requested it do so or otherwise.

49 For completeness, I further note that it is not disputed by Kai Hospitality that sometime in or around February 2022, Mevan tried to apply for its own utility accounts for the first level of the Premises but was unsuccessful because of, among other things, the lack of unit number allotted to the (Tenanted Premises) and the requirement to have separate re-piping and re-cabling and a clear partition to demarcate the leased premises for the new account holder[40].

50 It therefore appears that in any event, neither Mevan nor Kai Hospitality was in a position to set up a separate utility account for the Tenanted Premises at all material times (or till at least February 2022) due to the various issues inherent with the Tenanted Premises and/or the Premises which needed to be addressed before they could do so.

Is the Reimbursement Claim the result of an appropriate and equitable apportionment of utility bills between parties at the Premises?

51 It has been accepted by both parties early on in the proceedings that "(Kai Hospitality) was to apportion (Mevan's) share of the utility bills based on usage by (Mevan), taking into account, among other things, the apportionment as regards utilities serving common areas, the number of parties using the utilities in the Premises and their respective amount of use of the utilities"[41]. As

[40] ASOF at [10]

[41] ASOF at [14]

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stated above, a review of the contemporaneous communications reflect that this agreement was reach on 1 June 2021[42].

52 In the context of the above, in deciding if Mevan had breached the Tenancy Agreement and if Kai Hospitality is entitled to its pleaded claim, the central issue before the Court is to ascertain if the Reimbursement Claim was the result of "an appropriate and equitable apportionment of the utility bills".

53 Given the fact that it was conceded at trial that charges for the supply of gas have been paid in full by Mevan[43], I will now turn to consider the appropriateness and equitability of the apportionment of electricity, water and refuse removal charges by Kai Hospitality to Mevan.

The apportionment of electricity charges

54 At paragraphs [22] to [25] of Ms Tan's Affidavit of Evidence in Chief, Ms Tan:

(a) gave evidence that she had instructed Ms Li Yin Yin ("Ms Li"), Kai Hospitality's accounts and administrative executive, to record the usage of the utilities, calculate, apportion, check and prepare the invoices to the Defendant for its share of the utilities charges;

(b) confirmed that Ms Li will "explain in detail how such steps were taken to prepare the relevant invoices"; and

[42] Ms Tan's AEIC at [17] and [18] and CBD 575 and 576

[43] NE, 18 July 2024, 18/24-32

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(c) provided details on the instructions and principles she had provided Ms Li in order for her to carry prepare and issue invoices to Mevan with respect to the apportionment of electricity charges.

55 At [11] to [21] of her Affidavit of Evidence of Chief, Ms Li provide details of how she calculated and arrived at the sum of electricity charges apportioned to Mevan. Ms Li further confirmed at trial that she was the individual responsible for the calculations as well as the apportionment set out in the invoices issued to Mevan in support of the Reimbursement Claim herein[44].

Calculations for the period from 1 June 2021 to 10 February 2022

56 Kai Hospitality adopted the approach below in order to arrive at the sum of electricity charges apportioned to Mevan for the period from 1 June 2021 to 10 February 2022[45].

57 As a starting point, based on electricity bills it had received in the period from 10 December 2020 to 9 March 2021, Kai Hospitality had calculated a base monthly electricity usage of 2400 kilowatt-hour ("KWH") for the common areas in the Premises which is a period when "there were no hotel guests but all other electricals were in use" at the Premises ("Base Monthly Electricity Usage"). In support of this, Kai Hospitality has tendered copies of the relevant electricity bills issued by Senoko Energy Supply Ltd ("Senoko Energy") from 10 December 2020 to 9 March 2021.

58 Based on the assumption that air conditioning would be the overarching source of electricity consumption, the electricity usage for each guest room was

[44] NE, 7 May 2024, 16/4-6

[45] Ms Tan's AEIC at [23] to [25] and Ms Li's AEIC at [11] to [15]

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then calculated based on the average period the air conditioner of each room was turned on and it was further stated that the air-conditioners were "found to utilise 1KWH of electricity per hour".

59 The electricity usage per room occupied by guests was further calculated bearing in mind the type of guests occupying the hotel, and flowing from this, it is Kai Hospitality's position that the period each type of guests remained in their rooms was as follows:

(a) For "short stay" guests, an average of 9 hours was observed resulting in 9KWH of electricity consumption per room night;

(b) For "long stay" guests, an average of 12 hours was observed, resulting in 12KWH of electricity consumption per room night; and

(c) For "stay home notice" ("SHN") guests, an average of 23 hours was observed, resulting in 23KWH of electricity consumption per room night.

60 The respective electricity consumption of each type of guests was multiplied by the total number of room nights for that type of guests for each billing period, with the resulting values for each type of guests subsequently added together. This, in Kai Hospitality's view represented the total amount of electricity consumed by the hotel guests for the material period, and such an amount would be attributed to Kai Hospitality.

61 In summary, in preparing the electricity bills from 1 June 2021 to 10 February 2022, the Base Monthly Electricity Usage and the total amount of electricity utilised by the hotel guests, as estimated by Kai Hospitality above,

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were deducted from the gross electricity usage of the Premises for the same period. The remaining electricity usage was then apportioned to the Mevan.

62 For the reasons below, I do not think Kai Hospitality has proven that the portion of the Reimbursement Claim relating to the apportionment of electricity to Mevan for this time period is appropriate and/or equitable.

63 First, there is no basis provided for Kai Hospitality's assumption that air-conditioner usage would be the "overarching source of electricity consumption". Even if this Court was to accept that air-conditioner usage would form the bulk of electricity usage, I am not persuaded that it is appropriate for me to accept the estimated air-conditioner usage presented by Kai Hospitality as the sole basis of calculating the electrical usage of each hotel guest residing at the Premises.

64 Second, in support of its assertion that the air-conditioner in each room was "found to utilise 1KWH of electricity per hour", Kai Hospitality relies on a one-page document which appears to be a truncated extract from a website that displays results for the calculation of the energy consumption of a room air conditioner[46]. The basis for this rate and the data on which the website has based its calculations is not stated in the extract and I am not of the view that this extract constitutes sufficient evidence or support for the per hour energy usage of air-conditioners at the Premises that Kai Hospitality has applied. In line with my views, Ms Li has accepted on the stand that this rate of electrical usage is a mere assumption and possibly inaccurate. At trial, Ms Li[47]:

[46] BA 99

[47] NE, 7 May 2024, 25/10-26/27

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(a) clarified that she was the one who extracted this information and explained that she had conducted google searches on the electrical usage of air-conditioners;

(b) accepted that it may be more accurate to "look at the brand and model if the air-conditioner(s)" used at the Premises "to find out what the energy usage is" but confirmed that she did not know what brand or model of air-conditioners the hotel and had chosen not to find out what model or brand of air-conditioners were in use when she was conducting her calculations; and

(c) accepted that the 1 kilowatts per hour rate applied for her calculations is an assumption, is not an accurate rate of energy consumption of the particular make or model used and is possibly inaccurate.

65 Third, there are no evidence and particulars provided in the affidavits of evidence in chief filed by Kai Hospitality informing this Court on how Kai Hospitality defined or categorised guests as "short stay" or "long stay" guests and/or how Kai Hospitality "observed" or arrived at the conclusion that "short stay" guests would remain in their rooms for an average of 9 hours a day, "long stay" guests would remain in their room for an average of 12 hours and that "stay home notice" guests would remain in their rooms for an average of 23 hours. Without any basis given, the Court is unable to ascertain the veracity of the estimates relied on Kai Hospitality as a basis for its calculations. On this aspect of the calculations, Ms Li's evidence at trial only served to highlight the underlying inaccuracy in the estimates above and confirm that Kai Hospitality

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had provided the above estimates based on assumptions instead of actual data, statistics or other objective sources of information. On the stand, Ms Li[48]:

(a) Confirmed that SHN guests were required to stay in their rooms for 24 hours and gave evidence that she had decided to calculate the air-conditioner usage of SHN guests at 23 hours based on:

(i) information she had received from the hotel manager that the air-conditioners in the hotel were pre-set to an eco-saving mode which meant they would not be "working every minute";

(ii) "some instruction manual of (air-conditioners)" she had looked at; and

(iii) "from (her) own life experience";

(b) Confirmed that she had made the decision above without checking the actual make or model of the air-conditioners used at the Premises and was not familiar with the make or model of the air-conditioners used at the Premises;

(c) Clarified that Kai Hospitality took the view that "long stay" guests would "come and stay in after work at around 6.00 to 7.00pm and then they will leave in the morning" during the period of their stay at the Premises but confirmed that she would not be able to tell "for each guest how long they've stayed in their room" and accepted that the assumption that they would stay an average of 12 hours in their room "may not be accurate";

[48] NE, 7 May 2025, 27/4-31/9

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(d) Confirmed that the assumption that short-stay guests would stay in their room for an average of 9 hours "may not be accurate"; and

(e) Confirmed that the assumptions made for the calculation of air-conditioner electricity usage "may not be correct".

66 Fourth, there is also no documentation provided in support of Ms Li's assertions on the number and nature of guests which stayed in the Premises as guests of Kai Hospitality from 1 June 2021 to 10 February 2022. In this regard, Ms Li accepted at trial that there is no objective evidence showing the room occupancy at the Premises for Kai Hospitality and "no evidence to back up" the statements she had made in her affidavit of evidence in chief on the occupancy rates[49].

67 Lastly, at trial, as the individual in charge of the apportionment and calculation of the invoices issued in support of the Reimbursement Claim, Ms Li has also accepted that[50]:

(a) she is not aware of the state of electrical usage in the Premises in the period from December 2020 to March 2021 and agreed that the Base Monthly Electricity Usage applied from 10 February 2022 to 15 June 2022, "may not be an accurate base to use";

(b) when there is higher room occupancy at the Premises, the rate of electrical usage in the common areas of the Premises may be higher but that she did not "see…fit to increase the base electricity consumption when there were hotel guests at the (Premises)"; and

[49] NE, 7 May 2024, 41/16-23

[50] NE, 7 May 2024, 23/6-25/5 and 41/28-42/14

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(c) In the circumstances, her method of apportionment was unfair to Mevan as Mevan would bear any increase in the base electricity consumption caused by the hotel guests in the common areas of the Premises.

68 In the circumstances, I am unable to find that the apportionment of electricity usage to Mevan carried out by Kai Hospitality for the time period above is appropriate or equitable.

Calculations for the period from 11 February 2022 to 15 June 2022

69 In the period from 11 February 2022 to 15 June 2022, Lion Peak was operating its hotel business at the Premises[51].

70 For this time period, Kai Hospitality adopted a different approach stated below in order to arrive at the quantum of electricity charges apportioned to Mevan for the period from 10 February 2022 to 15 June 2022[52].

71 A base electricity usage of 3KWH per half hour was apportioned to Mevan based on: (a) Kai Hospitality's assumption that Mevan's electrical appliances, including but not limited to, fridges, freezers, icemakers, beer machines, etc., are constantly running and would gradually consume more electricity the longer they are used, given the inevitable progress of time resulting in wear and tear; and (b) a calculation table prepared with reference to "pages of…relevant websites", Mevan's inventory and Mevan's purported high usage of air conditioning ("the Table").

[51] Ms Tan's AEIC at [24]

[52] Ms Tan's AEIC at [23] to [25] and Ms Li's AEIC at [16] to [21]

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72 In addition to the above, Ms Li was also tasked to calculate Mevan's electrical usage during this time period.

(a) Ms Li was to check and record half hourly electricity meter readings for the Premises, which she did via accessing the SP Services online portal.

(b) During operating hours, Mevan's electricity usage was calculated and apportioned "based on the surges in the said half hourly electricity readings that began when (Mevan) commenced its operation of its restaurant business and continued all the way until it closed its restaurant business for the day".

(c) Ms Li was also to take into account Lion Peak's usages based on "the said half hourly electricity readings and the relevant patterns".

73 For the reasons below, I do not think Kai Hospitality has proven that the portion of the Reimbursement Claim relating to the apportionment of electricity to Mevan for this time period is appropriate and/or equitable.

74 Firstly, it was clarified by Ms Li at trial that a different approach was adopted by Kai Hospitality with respect to the apportionment of electrical usage to Mevan in the period from 10 February 2022 to 15 June 2022 from the approach adopted in the period from 1 June 2021 to 1 February 2022 because she was "unaware of the room occupancy rates for Lion Peak" during this time period[53]. Without data on the room occupancy rates for Lion Peak and no specifications of what "relevant patterns" had been noted and relied on, I am not persuaded that Kai Hospitality had adequately or properly taken into

[53] NE, 7 May 2024, 42/25-43/3

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consideration the usage of electricity by Lion Peak's guests during the period from 11 February 2022 to 15 June 2022 in the apportionment exercise it had carried out.

75 Secondly, Ms Li unequivocally accepted at trial that her method of apportionment during this time period was unfair. In particular, Ms Li had accepted that[54]:

(a) Lion Peak's usage of electricity would be dependent on the number of hotel guests residing at the Premises but that she was unable to ascertain the hotel occupancy rate for Lion Peak;

(b) She had "sacrifice(d) fairness in order to prepare the invoices to be issued to (Mevan)" because "they have been pressing for the invoice" and she "did this in a rush";

(c) The invoices issued to Mevan may be inaccurate because of the rush and because care was not taken to verify the actual use of electricity; and

(d) Though subsequent amendments were made to the invoices issued to Mevan to address over-charging issues, neither she nor these amendments have addressed the fact that Mevan was "made to bear more of the electricity charges when actually they did not use those electricity".

[54] NE, 7 May 2024, 45/4-13 and 46/17-47/4

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76 Lastly, I am also not convinced that the Table[55] created and relied on by Kai Hospitality in support of Mevan's base electricity usage is accurate and/or reflects Mevan's base electricity usage.

(a) In support of the calculations within the Table, Kai Hospitality refers to photos taken of 2 fridges, 3 chillers, 1 ice machine and 1 beer machine taken at the Tenanted Premises in 2021 and information on the usage power of what appears to be products of a similar nature advertised for sale on the website www.Alibaba.com[56].

(b) There is no evidence that Kai Hospitality had taken steps to ascertain the actual make or model of the equipment used by Mevan and/or look for objective data or measurements of how much energy the said equipment would consume.

(c) The advertisements relied on are not cogent or objective evidence that Kai Hospitality should have based its calculations on, particularly where there has been no efforts made to ensure the accuracy of the information stated within the said advertisements with reference to the equipment used by Mevan.

(d) Further to the above, even if the Court was to accept that the identified equipment were switched on at all times and that the rates proposed by Kai Hospitality are appropriate, there does not appear to be any rationale or basis for the uplift from 2.249/kw to 3kw per half an hour imposed by Kai Hospitality.

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[55] BA 101

[56] BA 101-127

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(e) There is no evidence before this Court supporting Kai Hospitality's assumption that Mevan's electrical appliances, including but not limited to, fridges, freezers, icemakers, beer machines, etc., are constantly running and would gradually consume more electricity the longer they are used, given the inevitable progress of time resulting in wear and tear.

77 In the circumstances, I am unable to find that the apportionment of electricity usage to Mevan carried out by Kai Hospitality for the time period above is appropriate or equitable.

The apportionment of water and refuse removal charges

78 At paragraphs [26] to [28] of Ms Tan's Affidavit of Evidence in Chief, Ms Tan:

(a) gave evidence that she had instructed Ms Li to apportion and bill Mevan for water and refuse removal charges; and

(b) provided details on the instructions and principles she had provided Ms Li in order for her to carry prepare and issue invoices to Mevan.

79 At [22] to [30] of her Affidavit of Evidence of Chief, Ms Li provide details of how she calculated and arrived at the sum of water and refuse removal charges apportioned to Mevan as the individual responsible for the calculations as well as the apportionment set out in the invoices issued to Mevan in support of the Reimbursement Claim herein[57].

[57] NE, 7 May 2024, 16/4-6

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Calculations for water usage from 11 May 2021 to 15 June 2022

80 The methodology adopted by Kai Hospitality in the apportionment and the calculation of charges for water usage to Mevan is set out below.

81 For the period between 11 May 2021 to 1 February 2022:

(a) The difference between the readings of the Premises' water meter at the beginning and the end of each billing period was taken as the total water usage of the Premises for the said intervening billing period.

(b) Kai Hospitality's base monthly water usage, including but not limited to, the common areas, Ms Tan's office and wine chiller, was calculated to be 2.2 Cubic Metres ("Cu M") monthly (the "Base Monthly Water Usage").

(c) "Based on research and checks that Ms Tan conducted", the average amount of water used per room per day was to be taken to be 140 litres, or 0.14 Cu M (the "Average Room Water Use").

(d) The Average Room Water Use was to be multiplied by the total number of room nights for the specific billing period to derive the total amount of water used by hotel guests for the said billing period.

(e) In apportioning the water bills, the Base Monthly Water Usage and the total amount of water used by hotel guests were deducted from the total water usage for the billing period. The remaining water usage after these deductions would then be attributed to Mevan as its usage.

(f) Mevan was also apportioned with 50% of the water conservation tax.

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82 For the apportionment of water usage to Mevan between 11 February 2022 to 15 June 2022, when Lion Peak was operating its hotel business at the Premises:

(a) Mevan was charged for 50.54 Cu M of water per month, being equivalent to Mevan's average monthly water usage over the preceding months ("Mevan's Average Monthly Water Usage"); and

(b) Mevan was also apportioned with 50% of the water conservation tax.

83 For the reasons below, I do not think Kai Hospitality has proven that the portion of the Reimbursement Claim relating to the apportionment of charges for water usage to Mevan for this time period is appropriate and/or equitable.

84 Firstly, there is no information or data provided in the affidavits filed by Kai Hospitality on how the Base Monthly Water Usage for the common areas at the Premises was arrived at and the sources of data (if any) which Kai Hospitality relied on to arrive at the figure of 2.2 Cu M. The Court is therefore unable to accept that this is an appropriate or equitable apportionment of water usage to the common areas of the Premises. For completeness, it was acknowledged by Ms Li on the stand that there was no evidence or explanation in her affidavit provided in support of the Base Monthly Water Usage[58].

85 Secondly, there is insufficient evidence tendered by Kai Hospitality in support of the Average Room Water Use rate which they rely on for their calculations.

[58] NE, 7 May 2024, 47/9-19

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(a) The data relied on by Kai Hospitality in arriving at the average water used in a hotel room per day appears to be statements extracted from a Channel News Asia article published on 22 March 2021 ("the CNA Article")[59]. The CNA Article stated that on average most people use 140 litres of water per day at home and that according to figures from the Public Utilities Board, household water consumption spiked from 140 litres per person per day in 2019 to 154 litres per day per person in 2020.

(b) Ms Li confirmed on the stand[60] that she had extracted this article, noted that the latest average water consumption per person was 154 litres per day and accepted that she had "arbitrarily reduced" the average rate of water use to 140 per day based on her "own assumptions" and "without any evidence about actual water used in the hotel room". On further cross-examination, she also agreed that the Average Room Water Use rate may be inaccurate but explained that she had "to issue the invoice and they have pressed me for this—for a long time"[61].

86 Thirdly, further to the issues above, the water charges imposed on Mevan for the period from 11 February 2022 to 15 April 2022 is arithmetically incorrect. At trial, Ms Liu confirmed[62] that she had made an error and that based on Kai Hospitality's proposed methodology, Mevan's Average Monthly Water Usage should be 39.32 Cu M per month instead of 50.84 Cu M per month. She further accepted[63] that in the circumstances, her "entire calculation in terms of

[59] BA 581-584

[60] NE, 7 May 2024, 47/20 -49/32

[61] NE, 7 May 2024, 50/1-9

[62] NE, 7 May 2024, 51/21-52/10

[63] NE, 7 May 2024, 52/11-53/3

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apportionment of water (charges) to (Mevan) during the period where Lion Peak was the hotel operator is wrong" and that Mevan "shouldn't have to pay the amount that (she had) invoiced".

87 Lastly, as stated above, there is no documentation or evidence provided in support of Ms Li's assertions on the number and nature of guests which stayed in the Premises as guests of Kai Hospitality from 1 June 2021 to 10 February 2022.

Apportionment of refuse removal charges to Mevan

88 For this category, Ms Li has simply stated in her Affidavit of Evidence in Chief that Mevan was allocated 50% of the refuse removal charges[64]. Without any explanation provided, the court can only assume that this allocation was made on the basis that at each material point in time Mevan was using the Premises with either Kai Hospitality or Lion Peak.

89 I am however not of the view that a 50% allocation to Mevan is appropriate or equitable bearing in mind that:

(a) Mevan only occupied an estimated 1,500 square feet of the first floor of the Premises for the purposes of running Daun Bistro as a restaurant that operated around 11 am to 9 pm with their staff arriving around 10am[65];

(b) Kai Hospitality ran a hotel at the Premises at various purported occupancy rates in the period from the middle of 2021 to 1 February 2022 with 32 rooms spread out from level two to level five and the attic

[64] Ms Li's AEIC at [25.vi.] and [28]

[65] BA 33 to 38 and NE, 18 July 2024/175/16-26

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of the Premises[66] and had submitted that it had "guests for a total of 1259 room night"[67] during this time period; and

(c) Lion Peak similarly ran a hotel at the Premises (with its occupancy rates unknown) in the period from 11 February 2022 to 15 June 2022 occupying 32 rooms spread out from level two to six of the Premises[68].

Conclusion

90 In summary, I am unable to find that the Reimbursement Claim is the result of an appropriate and equitable apportionment of utility charges to Mevan and/or that Kai Hospitality is entitled to its Reimbursement Claim when:

(a) There are issues with the nature, reliability and accuracy of Kai Hospitality's methodology and the sources of data it has chosen to rely on to establish *inter alia* the rates of usage relied on for its calculations;

(b) There is insufficient evidence and/or particulars provided to the Court to support various assumptions, calculations, rates of usage and/or assertions that Kai Hospitality had made or relied on in order to quantify the apportionment of utilities to Mevan; and

(c) The representative of Kai Hospitality in charge of the calculation and apportionment of utilities to Mevan, Ms Li, has made several admissions at trial on the inaccuracy and unfairness in the calculations and/or apportionment she had made and ultimately agreed towards the

[66] Ms Tan's AEIC at [2]

[67] Ms Li's AEIC at [25.i.]

[68] CBD 661-669

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end of her cross-examination her method of calculating the utilities to be apportioned to Mevan was "not entirely correct"[69].

Is Kai Hospitality entitled to a 10% administrative charge?

91 Turning to the next issue, it is not disputed that there is no clause within the Tenancy Agreement allowing Kai Hospitality to impose a 10% administrative charge on Mevan for the work it had undertaken with respect to the apportionment of utilities.

92 Notwithstanding the above, it is Kai Hospitality's position[70] that: (a) "due to the significant amount of work, time, effort and resources" expended in the calculation of utility charges, Ms Tan had instructed Ms. Li to inform Mevan that administrative fees would be chargeable; (b) the said administrative fees was reasonable and there were no ostensible objections raised by Mevan on this issue; and (c) Ms Li therefore incorporated a 10% administrative fees on top of each bill issued to Mevan for utilities "in consideration of the work done in checking, recording, calculating, apportioning the utilities usage, preparing, issuing invoices and processing payments".

93 I do not accept Kai Hospitality's submissions and in particular, am not persuaded by Kai Hospitality's position[71] that Mevan did not disagree with the imposition of the administrative fee when it was imposed.

(a) The potential imposition of an administrative fee was first raised by Ms Li on behalf of Kai Hospitality on 13 February 2022 via a

[69] NE, 7 May 20024, 53/4-12

[70] Ms Tan's AEIC at [20]

[71] CCS at [26]

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WhatsApp conversation with Ms Wenny Gotama Oey ("Ms Oey")[72]. Following Ms Oey's request for an "online or offline bill" before making payment, Ms Li had responded by saying "shall I ask accounts to invoice you instead but then please bear in mind there will be an admin charge (for administrative time spent) which I don't know at what percentage".

(b) On 22 February 2022, Kai Hospitality followed up with an electronic mail in which Ms Tan sought payment from Mevan and stated that "if (Mevan) prefer(s), (Kai Hospitality) can invoice (them) with an admin charge of 10%, please confirm".

(c) Shortly thereafter, on 1 March 2022, Mevan had through a letter issued by its solicitors[73] rejected the imposition of the administrative fee.

94 In my view, if Kai Hospitality intended to impose an administrative fee for the work it would carry out with respect to the apportionment of utilities at the Premises, an agreement should have been obtained from Mevan before the work was carried out on: (a) the imposition of an administrative fee; and (b) the quantum of such the administrative fee or an agreed methodology or basis for the calculation of an administrative fee. This agreement should have been obtained ideally at the commencement of the Tenancy Agreement or at the very least at the point when Kai Hospitality agreed to carry out the apportionment in June 2021. However, no such agreement was obtained.

95 In the circumstances, I find that Kai Hospitality is not entitled to unilaterally and belatedly decide to charge and/or claim for the 10%

[72] CBD at 700

[73] CBD 779 to 783

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administrative fee it had imposed on top of the share of the utilities bills it had attempted to apportion to Mevan.

Did Mevan breach the Tenancy Agreement?

96 Flowing on from the determinations made above, I am further not of the view that Mevan has breached the Tenancy Agreement by failing to pay the Reimbursement Claim and administrative charges imposed because:

(a) It is not disputed that the agreement reached between parties was for "(Kai Hospitality) to apportion (Mevan's) share of the utility bills based on usage by (Mevan), taking into account, among other things, the apportionment as regards utilities serving common areas, the number of parties using the utilities in the Premises and their respective amount of use of the utilities"[74].

(b) Despite requests made by Mevan and its solicitors for information and documents as to how the invoices issued in support of the Reimbursement Claim were calculated, the complete methodology and calculations above were only provided after the commencement of the present proceedings;

(c) Mevan was not refusing to pay for utility charges it had incurred but was asking for a substantiation of the apportionment it had received and had acted reasonably in asking for the same;

(d) For the reasons stated above, Mevan's concerns were legitimate and the Reimbursement Claim was not the result of an appropriate and equitable apportionment of utility charges to Mevan; and

[74] ASOF at [14]

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(e) There is no basis for Kai Hospitality to impose a 10% administrative charge on Mevan for the apportionment of utilities.

What is the outstanding amount payable by Mevan to Kai Hospitality for utilities incurred during the Term of the Tenancy Agreement?

97 It is trite law that the burden of proof is on Kai Hospitality to prove the quantum of damage it has pleaded to. If a claimant fails to prove either the fact of damage or the quantum of its loss, typically only nominal damages may be awarded: See *Youprint Productions Pte Ltd v Mak Sook Ling* [2022] SGHC 212 at [5].

98 However, fortunately for Kai Hospitality, in the present case:

(a) Mevan is not disputing that it has incurred utility charges during the Term of the Tenancy Agreement but merely disputing the apportionment of utilities at the Premises as carried out by Kai Hospitality; and

(b) It is Mevan's position in its closing submissions[75] that in the event that the Court is not with Mevan with respect to the imposition of the S$1,500 limit on monthly utility charges, "with the gaps in (Kai Hospitality's) case…it is only fair and logical that (Mevan), being one out of three parties at the Premises, bears one-third of the total amount as invoiced by the service provider for the said periods".

99 As stated above, I note that:

[75] DCS at [37]

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(a) at all material times Mevan only occupied 1500 square feet of the first floor of the Premises while either Kai Hospitality or Lion Peak occupied the remaining part of the first floor and remaining 6 floors of the Premises; and

(b) The opening hours of Daun Bistro start from around 11 am to 9 pm with Mevan's staff arriving around 10am[76] while hotel guests and staff would by necessity use the Premises (in turn or concurrently) throughout the day with hotel guests entitled to access their rooms throughout the day, the common areas being lit and/or air-conditioned through the day and with the staff of the hoteliers servicing the guests and/or maintaining the cleanliness of rooms and common areas.

100 It is clear that the Premises does not appear to have been used by all three parties at the same time during the course of the Tenancy Agreement.

101 However, I accept Mevan's submitted concession and proposed method of apportionment as fair, appropriate and equitable bearing in mind:

(a) That Mevan could have sought nominal damages from this Court in light of Kai Hospitality's failure to adequately quantify and prove its pleaded claim but did not do so;

(b) That Mevan occupies significantly less than one third of the Premises in terms of floor area during the Term of the Tenancy Agreement; and

(c) The substantial utility charges that are likely to be incurred in the maintenance, lighting and/or cleaning of the common areas (in the

[76] BA 33 to 38 and NE, 18 July 2024/175/16-26

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remaining part of the first floor of the Premises and remaining 6 floors) and hotel rooms by Kai Hospitality or Lion Peak in comparison with the maintenance, lighting, cleaning, refrigeration and cooking services carried out by Mevan in 1500 square feet at the first floor of the Premises through the operation of Daun Bistro.

102 The utility bills provided by the various service providers show that the aggregate sum of S$79,984.86 was incurred at the Premises for water, electricity and refuse removal for the applicable time periods:

(a) With respect to electricity used at the Premises in the period from 1 June 2021 to 15 June 2022[77], the bills issued by SP Services Ltd (excluding sums invoiced for security deposits, pink notices fees and late payment charges which have not been waived) show that the aggregate sum of S$76,879.54 (including GST) was charged.

(b) In the period from 11 May 2021 to 15 June 2022[78], the bills issued by the SP Group (excluding sums invoiced for gas services, deposits, pink notice fees and late payment charges which have not been waived) show that the aggregate sum of S$3,105.32 (including GST) was charged for water usage and refuse removal from the Premises.

103 Bearing in mind that Mevan has already paid Kai Hospitality the aggregate sum of S$12,791.46 (being S$16,791.61 minus payments made for gas charges amounting to the aggregate sum of S$4,000.15)[79] and adopting the approach proposed by Mevan above, I find that the outstanding amount payable

[77] BA 360-385 and 558-571

[78] BA 586-603 and 609-621

[79] [13] of SOC and ASOF at [18]

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by Mevan to Kai Hospitality for utilities incurred during the Term of the Tenancy Agreement amounts to the sum of S$13,870.16 (S$79,984.86 ÷ 3 = S$26,661.62 minus S$12,791.46).

Has Kai Hospitality breached the Tenancy Agreement?

Applicable legal principles

104 Turning to Mevan's counterclaim, it is trite that in order to find that there is a breach of the covenant for quiet enjoyment, there must be some interference with the enjoyment of the demised premises. The interference need not be direct or physical so long as it substantially interferes with the title to or possession of the demised premises or the ordinary and lawful enjoyment of those premises by the tenant: *Lim Kau Tee and another v Lee Kay Li* [2005] SGHC 162 ("*Lim Kau Tee*") at [54].

105 Whether this substantial interference has taken place is, in each case, a question of fact: *Lim Kau Tee* at [51].

106 A breach of the covenant of quiet covenant does not occur when:

(a) The "mere likelihood of interruption" of the plaintiff's actual enjoyment of land has arisen and there was no "entry on, or actual disturbance of, the lessee": *Lim Kau Tee* at [53] citing *Hill & Redman's Law of Landlord and Tenant* (John Furber gen ed) (LexisNexis Butterworths, Looseleaf Ed, September 2003 release) at A1857 and *Howard v Maitland* (1883) 11 QB 695 at 700; or

(b) There is a "mere temporary inconvenience caused by a lessor" which is not "substantial": *Lim Kau Tee* at [55] to [58] citing *Manchester, Sheffield & Lincolnshire Railway Company v Anderson*

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[1898] 2 Ch 394 at 401, *Phelps v City of London Corporation* [1916] 2 Ch 255 at 267 and *Budd-Scott v Daniell* [1902] 2 KB 351.

107 Acts amounting to a breach of the covenant of quiet enjoyment need not arise from the direct use of leased premises but can be caused by acts affecting common property so long as these acts interfere with the tenant's use and enjoyment of the leased premises: *iHub Solutions Pte Ltd v. Freight Links Express Logisticentre Pte Ltd* [2017] SGHC 6 ("*iHub*") at [32] to [56].

Mevan's case

108 It is Mevan's case that Kai Hospitality has breached the covenant of quiet enjoyment as there has been substantial interference with its ordinary and lawful enjoyment of the Tenanted Premises. In support of its claims that there had been substantial interference with its ordinary and lawful enjoyment of the Tenanted Premises, Mevan relies on[80]:

(a) Two altercations that had occurred on 14 February 2022 and 17 March 2022 between a representative of Lion Peak, Mr John Tay ("Mr Tay") and representatives of Mevan which Mevan pleads "could have been avoided had Kai Hospitality coordinated and/or facilitated the conduct of business between the tenants of the Premises" ("the Altercations");

(b) Mr Sudjono's and Ms Oey's evidence that "given that the hotel reception is on the first floor of (the Premises), the staff of Daun Bistro had (stood-in)/assisted with the checking-in of the hotel guests…on

[80] Mr Sudjono's AEIC at [30] to [39] and Ms Wenny Gotama Oey's AEIC at [29] to [39]

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many occasions" causing "much disruption or disturbance to (Mevan) to run and operate Daun Bistro in peace"; and

(c) Mr Sudjono's and Ms Oey's evidence that there had purportedly been many instances of unknown visitors/strangers accessing the first level of the Premises through the backdoor which is disruptive and disturbs Mevan's quiet enjoyment and/or possession of the Tenanted Premises.

(hereinafter to be collectively referred to as "the Purported Acts of Interference" where appropriate)

Preliminary issue: The Tenanted Premises

109 Before going into whether the Purported Acts of Interference constitute a breach on the part of Kai Hospitality, I am of the view that it would be appropriate for the Court to ascertain as a preliminary point if the Tenanted Premises included the rear area, the rear backdoor and the hotel reception area in order to determine if the Purported Acts of Interference had occurred in the common areas of the Premises or within the Tenanted Premises as a starting point of reference.

110 It is Mevan's pleaded position that under the Tenancy Agreement, it had tenanted and was entitled to possession of the first floor of the Premises at all material times[81].

111 I note that in its closing submissions, this position has shifted slightly with Mevan submitting[82] that the Tenancy Agreement "expressly states that

[81] D&CC at [3.2] and [20], [22]

[82] DCS at [42]

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("Mevan's) leased premises would include that of the whole of the first floor (which would include the rear backdoor), save for mutually agreed exclusions, i.e. the reception of the hotel" and that "the rear backdoor" formed part of the Tenanted Premises.

112 I am not persuaded by Mevan's arguments in this regard.

113 Firstly, the Tenancy Agreement expressly states that the Tenanted Premises would only include "the approximate area of 1500 sq feet…as shown during the viewings" of "#01-00" or the first floor of the Premises. Contrary to Mevan's submissions, the Tenancy Agreement does not expressly or implicitly state that the whole of the first floor was leased to Mevan "save for mutually agreed exclusions" but instead specifies that a specified floor area of the first floor of the Premises is leased to Mevan as shown to Mevan at the viewing conducted before the signing of the Tenancy Agreement.

114 Secondly, Mevan's above submissions on what constitutes the Tenanted Premises are not supported by any objective evidence and are inconsistent with and/or contradicted by the evidence of its two witnesses.

(a) The Court was initially informed[83] at trial that it was Mevan's position that the entire passageway from the hotel reception leading up to the only lift serving the Premises and thereafter the rear area of the Premises (including the rear backdoor located next to the lift) formed part of the Tenanted Premises though the lift itself was a common area and there was no other way to access the lift from the hotel reception (which is part of the common area) unless guests walked through the passageway leading to the lift.

[83] NE, 18 July 2024, 18 July 2024, 42/8-45/16

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(b) However, contrary to Mevan's position above and submissions that the Tenanted Premises comprise the entire first floor of the Premises save for excluded areas, when Mr Sudjono took the stand, he confirmed that[84]:

(i) There is "nothing exclusive" on the first floor of the Premises save for the bar and the area of the kitchen where they cooked;

(ii) The passageway leading up to the lift and ending at the rear backdoor is "for the usage of the tenants and even the hotel guests" and "for everyone".

(iii) Cooking was only done within the restaurant and there was no cooking carried out in the back area located right next to the rear backdoor and that Mevan only carried out food preparation in the back area; and

(iv) Kai Hospitality also stored items in the back or rear area located next to the rear backdoor.

(c) Mr Sudjono also initially took the position on the stand that Mevan had only asked Ms Tan if Mevan could use the rear area when Mevan had moved into the Premises before changing his position after further questioning to say that Mevan had purportedly asked Ms Tan if it could use the rear area before it had moved in[85].

(d) Further to the above, contrary to the terms of the Tenancy Agreement, Mevan's closing submissions and Mr Sudjono's evidence

[84] NE, 18 July 2024, 141/1-142/6, 142/8-25, 101/18-103/8, 104/20-29

[85] NE, 18 July 2024, 102/27-103/27

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above, I note that it is Ms Oey's position in her affidavit of evidence in chief that:

(i) Kai Holdings had leased part of the first floor of the Premises to Lion Peak for "hotel reception usage" "notwithstanding the fact that (Mevan) had leased the whole of the first level of Purvis Street" under the Tenancy Agreement[86]; and

(ii) The hotel reception area "was also leased to (Mevan)"[87].

115 In contrast, Kai Hospitality's position has consistently been that Mevan had only tenanted part of the first floor of the Premises under the Tenancy Agreement[88] and that *inter alia* the back area and rear backdoor were for the common usage of all tenants though Mevan had been allowed to use the rear area and the rear backdoor along with all the other tenants using the Premises[89].

116 Lastly, in addition to the above, Mevan's position that the entirety of the first floor of the Premises was tenanted to Mevan is also inherently illogical and commercially improbable. All parties were aware prior to and from the first viewing of the Premises attended by Mevan that the Premises were primarily to be used as a hotel[90]. Without any cogent evidence raised by Mevan proving the same, I am unable to accept bearing this factual background in mind that, Kai Hospitality would have agreed to grant Mevan exclusive use and possession of:

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[86] Ms Oey's AEIC at [25(e)]

[87] Ms Oey's AEIC at [25(d)]

[88] Defence to Counterclaim ("DCC") at [22] to [24] and Ms Tan's AEIC at [8] and [44] to [50]

[89] D&CC at [14] to [24] and Ms Tan's AEIC at [8] and [44] to [50]

[90] Mr Sudjono's AEIC at [7]

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(a) The entire first floor including the hotel reception area situated at the front of the first floor of the Premises when it would by necessity need this reception area for the conduct of its hotel business on the remaining floors of the Premises and for convenient access to the upper floors;

(b) The only passageway leading from the hotel reception to the only lift which services the Premises[91] as this would mean that guests of the hotel and the staff of the hotel would have no access to the said lift or the upper floors of the Premises save for a staircase leading up to the second floor[92];

(c) The rear area which Kai Hospitality (by Mr Sudjono's own admission above on the stand) also uses for its own storage purposes; and

(d) The only rear backdoor for the Premises which is situated next to the lift as it is not uncommon at hotels for example for staff to access a hotel via its back entrance, for deliveries to be made through the back door and/or for individuals providing maintenance services for hotels or other commercial establishment to enter premises from the backdoor.

117 In the circumstances:

(a) I do not accept Mevan's position that it has tenanted the entire first floor of the Premises;

[91] NE, 18 July 2024, 18 July 2024, 42/8-45/16 and 1 BA 295 to 299

[92] 1 BA 209 to 293

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(b) I do not accept Mevan's submissions and find that the Tenanted Premises do not include the rear backdoor or the rear area adjacent to it though Mevan was clearly allowed to regularly use it along with *inter alia* Kai Hospitality who stored items in that common area; and

(c) I do not accept Ms Oey's evidence and find that the hotel reception area clearly forms part of the common area on the first floor of the Premises.

The Altercations

118 For the reasons below, I am not of the view that Mevan has succeeded in proving that the Altercations and Kai Hospitality's involvement (or lack thereof) in the said Altercations and the events surrounding the said disputes amount to a breach of the covenant of quiet enjoyment.

119 Firstly, I am of the view that the two Altercations at best amount to "temporary inconvenience(s)" or were a passing disturbance to Mevan: *Lim Kau Tee* at [55] to [58]. From my review of the available evidence, neither of the two Altercations appear to be major incidents:

(a) It is Ms Oey's evidence that when the first altercation occurred on 14 February 2022, Mr Tay had purportedly uttered profanities at her and pushed her. I however note that it was also her evidence that this incident ended with Mr Tay apologising to her "for his behaviour and/or reaction which was out of character and out of line"[93].

(b) It is Mr Sudjono's evidence that he was present when the police were called down on 17 March 2022 after the second altercation

[93] 2 BA 17 and 18

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occurred between Mr Tay and a member of Daun Bistro's staff named Mr Ow and that a case card was given to Mr Ow ("the Case Card"). However:

(i) It appears from Mr Sudjono's evidence that while aggressive shouting and pushing had purportedly occurred "as though Mr Tay was about to start a physical fight", no actual physical fight had in actuality occurred;

(ii) The Case Card[94] only notes that a report had been made falling within the classification of "criminal force", it however appears there was no action taken by the police after they had arrived at the scene. This is recorded in the Case Card, as the attending officer had not selected any of the three available options below the header "Actions Taken". The contents of the Case Card therefore show that:

(A) Neither party was "advised to seek assistance from State Courts";

(B) Neither party was "advised to seek community mediation"; and

(C) The matter was not slated "for further investigation".

(iii) There is also no evidence or assertion made by Mevan that any follow-up, investigations and/or charges were made against any party following the altercation which occurred on 17 March 2022.

[94] 2 BA 737

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120 There is also no evidence before me of any further altercations occurring between parties save for the two incidents above.

121 I am therefore of the view that the Altercations were simply two minor and isolated incidences of disagreements which had occurred between two sub-tenants which while unfortunate and unpleasant, in my view, do not amount to substantial interference with Mevan's quiet enjoyment of its Tenanted Premises.

122 Secondly, while the two Altercations themselves may have been unpleasant, save for assertions made by Ms Oey that "customers of Daun Bistro had heard the altercation"[95] and Mr Sudjono's opinion that "banging" could be heard from the restaurant, there are no particulars or evidence as to how these Altercations affected Mevan's operations as a restaurant in its Tenanted Premises and there are no assertions made that the two disagreements had substantially interfered with business operations or activities within its Tenanted Premises. This in my view further buttresses my opinion that the two Altercations do not amount to a substantial interference of Mevan's title to or possession of the Tenanted Premises and/or their ordinary and lawful enjoyment of the Tenanted Premises.

123 Thirdly, flowing on my finding above that the rear backdoor and the rear area adjacent to it do not form part of the Tenanted Premises and are part of the common area, I am not of the view that Mevan was entitled to restrict access to the rear area of the first floor or the rear backdoor by Lion Peak.

124 Lastly, I also do not accept that Kai Hospitality had chosen not to manage the tenants effectively by remaining inactive[96] and further do not accept

[95] 2 BA 17

[96] DCS at [40] to [48]

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that the Altercations could have been avoided if Kai Hospitality had "ensured that the tenants of (the Premises) were sufficiently acquainted to avoid any unnecessary misunderstanding and/or disputes between tenants"[97]. I am not of the view that Kai Hospitality had to "coordinat(e)…access rights (of) the various tenants" to the common areas of the Premises or manage the sharing of common spaces in the Premises to the extent expected by Mevan.

(a) Both Mevan and Lion Peak are run by businessmen or businesswomen who should be fully capable of independently reviewing their respective tenancy agreements to determine their access rights at the Premises, understanding that neither of them are entitled to exclusive usage or access to shared spaces or common areas of the Premises, cordially take steps to resolve or avoid disagreements with other tenants and in any event seek the necessary clarification or assistance from their landlord at the appropriate juncture should there be an inability to agree on their respective access rights to common areas without resorting to violence, shouting or aggression.

(b) The starting and primary onus to avoid any purported act of aggression towards a fellow sub-tenant is on all the individuals involved in the Altercations and not their landlord;

(c) Where common areas are concerned, so long as all parties reasonably share the use of such areas, there should not be any anticipated disputes or expectation that altercations would occur in the normal course of daily operations;

[97] 2 BA 18

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(d) I am further of the view that a landlord cannot be obliged to pre-emptively ensure that their tenants are sufficiently acquainted so as to avoid any unnecessary misunderstanding and/or disputes but do note that in any event Ms Tan had introduced Mr Tay to Ms Oey as the other tenant who would be occupying the remining part of the Premises "upstairs"[98].

(e) I further do not accept that Kai Hospitality did not take any active steps to resolve the situation between Lion Peak and Mevan.

(f) On 14 February 2022, after the first Altercation had occurred, a WhatsApp conversation occurred between Ms Oey and Ms Tan discussing the incident. The extract of the conversation appears to be incomplete with the last message disclosed being one sent by Ms Oey informing Ms Tan that she was pausing the conversation to take a bath and would respond to Ms Tan's queries after. There are no further particulars provided as to what had occurred after this point in the conversation. However, given that this incident had ended with an apology by Mr Tay, it is not surprising if neither party took any further substantive action after this discussion in February 2022.

(g) Two days after the second Altercation, on 19 March 2022, Ms Tan on behalf of Kai Hospitality sent a lengthy email to Mevan and Lion Peak[99] in which she stated:

(i) that the second Altercation on 17 March 2022 was an unhappy but avoidable incident that resulted from Mevan

[98] 2 BA 18 and 19

[99] 1 BA 301 and 302

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locking the rear door during its operation and Lion Peak being unable to access to the Premises conveniently;

(ii) that she "(did) not wish to speculate the reason why" the rear backdoor was locked by Mevan during its operation and had observed that "until the 1st week of Mar'22, the (rear backdoor) was always closed but not locked and (was) locked at the end of Mevan/(Daun Bistro's) operation" (sic);

(iii) that she hoped all parties can conduct business in reasonable harmony; and

(iv) a detailed list of proposals and requests addressed to both parties "to avoid/minimise future (conflicts)".

(h) There is no evidence of further incidents between Lion Peak and Mevan after the abovementioned email.

125 In the circumstances, I am not of the view that the two Altercations themselves are sufficient in themselves to amount to substantive interference with Mevan's quiet enjoyment of the Tenanted Premises and/or that Kai Hospitality had committed any breach in this regard.

The checking in of hotel guests and access to the first floor of the Premises by strangers

126 Further to the above, I am also not convinced that the two remaining Purported Acts of Interference substantially interfered with Mevan's title to or possession of the demised premises and/or the ordinary and lawful enjoyment of the Tenanted Premises by Mevan.

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127 Firstly, Mevan was well aware before electing to enter into the Letter of Intent or Tenancy Agreement that it was choosing to rent Tenanted Premises forming part of the first floor of Premises with were intended to be used for the purposes of conducting a hotel business, that there would "hotel above" the Tenanted Premises and that the Tenanted Premises would be "combine(d) with hotel lobby"[100]. Inherent in this understanding is the expectation that the common areas of the first floor would by necessity and logic be accessed by many individuals on a regular basis who are unknown to Mevan and who might not be at the Premises for the purposes of patronising Daun Bistro. Such individuals would comprise of *inter alia* guests of the hotel and/or staff of the other tenants in the Premises, all of whom would be strangers to Mevan. As observed by the House of Lords in *Southwark London Borough Council v Tanner* [2001] 1 AC 44, "the tenant takes the property not only in the physical condition in which he finds it, but also subject to the uses which the parties must have contemplated would be made of the parts retained by the landlord".

128 Secondly, the hotel reception clearly does not form part of the Tenanted Premises[101] and the circumstances in which or the reasons why the staff of Daun Bistro had purportedly assisted with the checking-in of hotel guests is unclear.

129 Mevan has not given any evidence or particulars on:

(a) Why the staff of Mevan were compelled to stand-on or assist in the checking in of hotel guests when the hotel reception area is not within Mevan's Tenanted Premises and when there is no alleged agreement or understanding that Mevan would assist with the checking

[100] CBD 408 to 410 and Mr Sudjono's AEIC at [7]

[101] NE, 18 July 2024, 44/20-26 and DCS at [42]

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in of hotel guests if representatives of Kai Hospitality or Lion Peak were not present;

(b) The dates, frequency and/or times at which such purported assistance was rendered;

(c) The acts or omissions which had been made by Kai Hospitality causing Mevan's staff to stand in or assist with the checking in of hotel guests resulting in disruption or disturbance was purportedly caused to Mevan operation of Daun Bistro; and

(d) The purported disruption or disturbance caused to Mevan.

130 In this regard, even if this Court accepts that Mevan had assisted with the checking in of guests on occasion due to Kai Hospitality's failure to provide adequate coverage of the hotel reception (which has not been properly asserted or proven by Mevan), there is insufficient reason or basis for the Court to find that this would amount to a substantial interference with Mevan's ordinary and lawful enjoyment of their Tenanted Premises and I am of the view that at best, a "mere temporary inconvenience" would have been caused by Kai Hospitality which is not "substantial": *Lim Kau Tee* at [55] to [58]

131 Lastly, I do not accept the position taken by both Ms Oey[102] and Mr Sudjono[103] that "there have been many instances of unknown visitors/strangers accessing the first level of (the Premises) through the back door which is disruptive and/or disturbing" to Mevan's quiet enjoyment of its "leased premises" for the following reasons.

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[102] 2 BA 19-21

[103] 2 BA -199201

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(a) Mevan does not have any rights or entitlement to restrict access to the first level of the Premises through the rear backdoor or otherwise at all material times under the Tenancy Agreement.

(b) The rear backdoor and the back area do not form part of the Tenanted Premises.

(c) It is not unusual or unexpected for visitors/strangers to access the first level of Premises being used as a hotel.

(d) Six out of the seven instances which Mevan has raised of individuals accessing the first floor of the Premises between 23 March 2022 and 27 March 2022 occurred outside of the opening hours or operation of Daun Bistro and it is therefore unclear how Mevan's operations at the Tenanted Premises are affected or interfered with[104].

(e) There is no evidence or allegation that any of the individuals or strangers had accessed the Tenanted Premises or damaged, tampered or removed any of Mevan's assets or equipment contained within the Tenanted Premises.

(f) In the circumstances, I am not convinced that there is a basis for Mevan's assertion that the "instances" of access to the first floor by visitors or strangers it had identified can amount to substantial interference with and/or a breach of its right to quiet enjoyment of its Tenanted Premises.

[104] Mr Sudjono's AEIC at [70]

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Conclusion

132 For the reasons above, I dismiss Mevan's Counterclaim.

Conclusion

133 In the circumstances, I order that Mevan pay the sum of S$13,870.16 to Kai Hospitality forthwith.

134 Parties are to file and serve written submissions on the appropriate orders to be made for costs and interest (both as to incident and quantum), limited to 5 pages (excluding any schedule of disbursements), within 14 days.

Georgina Lum
District Judge

Mr Chia Kia Boon (M/s Robert Wang & Woo LLP) for the claimant and defendant in counterclaim;
Mr Wang Liansheng and Ms Ng Rui Wen (M/s Bih Li & Lee LLP) for the defendant and claimant in counterclaim.

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